

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JUAN ORTIZ,

Plaintiff,

V.

SCHNEIDER NATIONAL CARRIERS, INC.
and RYAN ASHLEY CUNNINGHAM,

Defendants.

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CIVIL ACTION NO. SA-24-CV-00175-FB

ORDER ACCEPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Before the Court are the Report and Recommendation of United States Magistrate Judge filed on February 12, 2025 (docket #28); Plaintiff's Response to the Court Regarding Dismissing Defendant Ryan Ashley Cunningham's from the Suit filed on February 26, 2025 (docket #38); and Defendant's Response to Plaintiff's Objection to Magistrate's Report and Recommendation filed on February 28, 2025 (docket # 39).

Where no party has objected to a Magistrate Judge's Report and Recommendation, the Court need not conduct a *de novo* review of them. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a *de novo* determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the Report and Recommendation and determine whether they are either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989).

On the other hand, any Report or Recommendation to which there are objections requires *de novo* review by the Court. Such a review means that the Court will examine the entire record, and will make an independent assessment of the law. The Court need not, however, conduct a *de novo* review

when the objections are frivolous, conclusive, or general in nature. *Battle v. United States Parole Commission*, 834 F.2d 419, 421 (5th Cir. 1987).

In the Report, United States Magistrate Judge Chestney recommends to this Court the following: (1) that Defendant, Ryan Ashley Cunningham's Motion to Strike Plaintiff's Amended Complaints (docket #22) be GRANTED; (2) that this Court STRIKE Plaintiff's First Amended Complaint (docket #11) and Plaintiff's Second Amended Complaint (docket #15); (3) that this Court TERMINATE Ryan Ashley Cunningham as a Defendant in this case; and (4) that Plaintiff's Motion to Remand, Motion for Leave to File First Amended Complaint, and Alternative Motion to Enter *Sua Sponte* Order (docket #21) be DENIED.

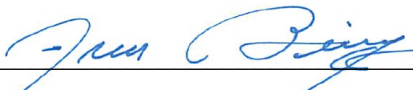
The Court has reviewed the Plaintiff's objections and has conducted a de novo review of those findings, conclusions or recommendations contained in the Report and Recommendation specifically identified by the Plaintiff in his objections and the basis for his objections, but the Court did not consider frivolous, conclusive or general objections or matters raised for the first time by the Plaintiff. The Court finds, after careful consideration of the record and the Report and Recommendation, that the Plaintiff's objections lack merit and are overruled. Therefore, the Court hereby accepts, approves, and adopts the Magistrate Judge's factual findings and legal conclusions contained in the Report and Recommendation (docket #28) and incorporates herein the Arguments and Authorities presented by Defendant Cunningham in her Response (docket #39) and finds the recommendation should be accepted such that: (1) Defendant, Ryan Ashley Cunningham's Motion to Strike Plaintiff's Amended Complaints (docket #22) shall be GRANTED such that Plaintiff's First Amended Complaint (docket #11) and Plaintiff's Second Amended Complaint (docket #15) shall be stricken from the record and Ryan Ashley Cunningham shall no longer remain as a Defendant in this

case; and (2) Plaintiff's Motion to Remand, Motion for Leave to File First Amended Complaint, and Alternative Motion to Enter *Sua Sponte* Order (docket #21) shall be DENIED.

Accordingly, it is hereby ORDERED that the Report and Recommendations of the United States Magistrate Judge, filed in this case on February 12, 2025 (docket #28) is ACCEPTED such that: (1) Defendant, Ryan Ashley Cunningham's Motion to Strike Plaintiff's Amended Complaints (docket #22) is GRANTED such that Plaintiff's First Amended Complaint (docket #11) and Plaintiff's Second Amended Complaint (docket #15) are stricken from the record and Ryan Ashley Cunningham is no longer a Defendant in this case; and (2) Plaintiff's Motion to Remand, Motion for Leave to File First Amended Complaint, and Alternative Motion to Enter *Sua Sponte* Order (docket #21) is DENIED.

It is so ORDERED.

SIGNED this 25th day of April, 2025.



FRED BIERY
UNITED STATES DISTRICT JUDGE